

EXHIBIT 4

KEITH LEFFLER, NOVEMBER 03, 2004

<p>Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE SOUTHERN DISTRICT OF OHIO</p> <p>3 WESTERN DIVISION</p> <p>4</p> <p>5 J.B.D.L. CORP., d/b/a)</p> <p>6 BECKETT APOTHECARY, et al.,)</p> <p>7 Plaintiffs,)</p> <p>8 -vs-) No. C-1-01-704</p> <p>9 WYETH,)</p> <p>10 Defendant.)</p> <p>11)</p> <p>12 CVS MERIDIAN, INC. and)</p> <p>13 RITE AID CORPORATION,)</p> <p>14 Plaintiffs,)</p> <p>15 -vs-) No. C-1-03-781</p> <p>16 WYETH,)</p> <p>17 Defendant.)</p> <p>18</p> <p>19</p> <p>20 THE VIDEOTAPED DEPOSITION OF KEITH LEFFLER</p> <p>21 VOLUME II</p> <p>22 NOVEMBER 3, 2004</p> <p>23</p> <p>24</p>	<p>Page 3</p> <p>1 PRESENT:</p> <p>2 HANGLEY, ARONCHICK, SEGAL & PUDLIN,</p> <p>3 (30 North Third Street, Suite 700,</p> <p>4 Harrisburg, Pennsylvania 17101,</p> <p>5 717-364-1004), by:</p> <p>6 MR. GORDON EINHORN,</p> <p>7 appeared on behalf of Plaintiffs</p> <p>8 CVS Meridian, Inc. and Rite Aid</p> <p>9 Corporation;</p> <p>10</p> <p>11 SCHIFFRIN & BARROWAY, LLP,</p> <p>12 (Three Bala Plaza East, Suite 400,</p> <p>13 Bala Cynwyd, Pennsylvania 19004,</p> <p>14 610-822-0276), by:</p> <p>15 MR. KENDALL S. ZYLSTRA,</p> <p>16 appeared on behalf of the Plaintiff</p> <p>17 Class of Direct Purchasers;</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 The videotaped deposition of KEITH LEFFLER,</p> <p>5 called by the Defendant for examination, taken</p> <p>6 pursuant to the Federal Rules of Civil Procedure of</p> <p>7 the United States District Courts pertaining to the</p> <p>8 taking of depositions, taken before CORINNE T.</p> <p>9 MARUT, C.S.R. No. 84-1968, a Notary Public within</p> <p>10 and for the County of DuPage, State of Illinois,</p> <p>11 and a Certified Shorthand Reporter of said state,</p> <p>12 at the offices of Winston & Strawn, Suite 4500, 35</p> <p>13 West Wacker Drive, Chicago, Illinois, on the 3rd</p> <p>14 day of November, A.D. 2004, commencing at 9:05 a.m.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 4</p> <p>1 PRESENT (Continued):</p> <p>2 WINSTON & STRAWN, LLP,</p> <p>3 (35 West Wacker Drive,</p> <p>4 Chicago, Illinois 60601-9703,</p> <p>5 312-558-6113), by:</p> <p>6 MR. GORDON DOBIE,</p> <p>7 -and-</p> <p>8 WYETH,</p> <p>9 (Five Giralda Farms,</p> <p>10 Madison, New Jersey 07940), by:</p> <p>11 MR. ELLIOT FEINBERG,</p> <p>12 appeared on behalf of the Defendant,</p> <p>13 Wyeth.</p> <p>14</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 ANDREA SHEPARD, Ph.D.,</p> <p>18 Principal, Cornerstone Research.</p> <p>19</p> <p>20 VIDEOTAPED BY:</p> <p>21 MR. ALUN HARRIS-JOHN,</p> <p>22 Esquire Deposition Services</p> <p>23</p> <p>24 REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968</p>

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<p style="text-align: right;">Page 181</p> <p>1 through 1998?</p> <p>2 A. Yes. I don't have any reason to think</p> <p>3 it would affect its pricing calculus. But I would</p> <p>4 expect it to take it into account.</p> <p>5 Q. All right. And in response to a number</p> <p>6 of my questions, you say that, for example,</p> <p>7 Mr. Edinburg, you said that he was just wrong. But</p> <p>8 in fact --</p> <p>9 A. I can't say he is wrong. In my opinion</p> <p>10 he's wrong.</p> <p>11 Q. But if Wyeth's beliefs were wrong and,</p> <p>12 in fact, that was the reason why Wyeth did price</p> <p>13 the product the way it did, that would not be --</p> <p>14 that would not be an anti- -- that the price</p> <p>15 increases that it then took would not have been</p> <p>16 caused by the -- the contracts that you talk about</p> <p>17 as being anticompetitive, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, in -- in paragraph 33 on page 22.</p> <p>20 A. Okay.</p> <p>21 Q. You say, the very last line, "Wyeth's</p> <p>22 market power was increased as a result of its</p> <p>23 efforts to strengthen and enforce its contractual</p> <p>24 barriers and impede Cenestin's entry."</p>	<p style="text-align: right;">Page 183</p> <p>1 A. In a static sense, yes, at a point in</p> <p>2 time, yes.</p> <p>3 Q. In the sense of before Cenestin was on</p> <p>4 the market, Wyeth had more market power, right?</p> <p>5 A. It faced less substitutes.</p> <p>6 Q. All right. Now, you say in -- this is</p> <p>7 footnote 40 on page 22, if I understand this right.</p> <p>8 You say that "It was only in early 1999, not long</p> <p>9 before the price increases at issue, that Wyeth</p> <p>10 learned its sole conjugated estrogen provision</p> <p>11 would be applicable to Cenestin"?</p> <p>12 A. Yes.</p> <p>13 Q. So, here you're saying that Wyeth didn't</p> <p>14 understand that it had effective contracts for</p> <p>15 Cenestin until sometime, what, in 1999, early '99?</p> <p>16 A. Well, this particular provision of the</p> <p>17 contracts.</p> <p>18 Q. So, Wyeth didn't know it had these</p> <p>19 provisions until sometime in early 1999?</p> <p>20 A. No, it knew it had the provisions. It</p> <p>21 didn't know the FDA was going to label Cenestin as</p> <p>22 a -- as a conjugated estrogen.</p> <p>23 Q. Okay. So, until early 1999 Wyeth didn't</p> <p>24 know that it had a contract that would be effective</p>
<p style="text-align: right;">Page 182</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Now, is it true, sir, that -- certainly</p> <p>4 it's not the case that Wyeth's market power</p> <p>5 increased over the period when Cenestin wasn't on</p> <p>6 the market, right?</p> <p>7 A. I'm sorry?</p> <p>8 Q. I mean, it's -- you're talking about</p> <p>9 Wyeth's market power increasing as a result of its</p> <p>10 efforts to strengthen and enforce its contractual</p> <p>11 barriers impeding Cenestin's entry. That's the</p> <p>12 last sentence of your paragraph 33.</p> <p>13 A. Yes.</p> <p>14 Q. I guess what I'm wondering is: Isn't it</p> <p>15 true that Wyeth actually had more market power in</p> <p>16 the period before Cenestin was even on the market?</p> <p>17 A. Holding constant the -- I certainly</p> <p>18 agree with you that a firm has more market power,</p> <p>19 everything else the same, the fewer and less strong</p> <p>20 the competitors it faces.</p> <p>21 Q. Okay. But when you say holding</p> <p>22 everything else the same, in this case in the</p> <p>23 actual world Wyeth did have more market power</p> <p>24 before Cenestin was on the market, correct?</p>	<p style="text-align: right;">Page 184</p> <p>1 against Cenestin because it didn't know that the</p> <p>2 product was going to be labeled a conjugated</p> <p>3 estrogen?</p> <p>4 A. No it had its rebate provisions in</p> <p>5 place. Its rebate provisions were independent of</p> <p>6 whether Cenestin was a sole conjugated estrogen or</p> <p>7 not. It also had sole conjugated estrogen</p> <p>8 provisions.</p> <p>9 Q. Oh, in paragraph 35, you talk about how</p> <p>10 "James suggests that these programs," which I think</p> <p>11 are --</p> <p>12 A. Okay, I see.</p> <p>13 Q. This is the shared success and the</p> <p>14 market share contracts and so on.</p> <p>15 -- "would not have impacted Premarin's</p> <p>16 pricing until many months after the entry of</p> <p>17 Cenestin."</p> <p>18 And you say, "This ignores the vast</p> <p>19 experience that Wyeth had in the market. In my</p> <p>20 opinion, it's reasonable to assume that Wyeth would</p> <p>21 be able to anticipate the impact of its programs,</p> <p>22 policies and offensive responses to Cenestin."</p> <p>23 Right?</p> <p>24 A. Um-hmm.</p>

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<p style="text-align: right;">Page 185</p> <p>1 Q. And the enforcement mechanisms that</p> <p>2 you're talking about are what, like market share</p> <p>3 agreements and that type of thing?</p> <p>4 A. Yes.</p> <p>5 Q. Now, again, you haven't yourself made a</p> <p>6 foreclosure analysis, right?</p> <p>7 A. If by foreclosure analysis you mean an</p> <p>8 analysis of exclusive contracts and the extent of</p> <p>9 market foreclosed by such exclusive contracts,</p> <p>10 since I don't view these as exclusive contracts I</p> <p>11 have not. If you mean something else, I don't</p> <p>12 know.</p> <p>13 Q. Okay. And you don't know whether or not</p> <p>14 there were in effect NDC blocks or not, correct?</p> <p>15 A. Right.</p> <p>16 Q. And we talked before, you said a new</p> <p>17 rebate deal with retailers, that Shared Success</p> <p>18 program. Is that another one of the enforcement</p> <p>19 mechanisms that you're talking about?</p> <p>20 A. No, I don't think I'm -- not in this</p> <p>21 context.</p> <p>22 Q. What evidence are you aware of that</p> <p>23 Wyeth knew at the time of Cenestin's launch which</p> <p>24 enforcement mechanisms MCOs would actually have in</p>	<p style="text-align: right;">Page 187</p> <p>1 that -- that I said, gee, I either screwed up that</p> <p>2 answer or I was misquoted.</p> <p>3 (WHEREUPON, a certain document was</p> <p>4 marked Leffler Deposition Exhibit</p> <p>5 No. 11, for identification, as of</p> <p>6 11/3/04.)</p> <p>7 BY MR. DOBIE:</p> <p>8 Q. Let me show you what's been marked as</p> <p>9 Exhibit 11, and for the record Exhibit 11 is a copy</p> <p>10 of your deposition, correct, sir?</p> <p>11 A. It is.</p> <p>12 Q. And you were asked some questions about</p> <p>13 a document that you reference in paragraph 36? You</p> <p>14 say in 36, "Both Professor Carlton and Professor</p> <p>15 James claim that I've misinterpreted the Wyeth</p> <p>16 document."</p> <p>17 A. Yes, I just had to get the context.</p> <p>18 Yes, I now know the document you're talking about.</p> <p>19 Q. All right. And that was a document --</p> <p>20 that's the Strickland memo. Do you remember that?</p> <p>21 A. I remember the memo, yeah.</p> <p>22 Q. And did you read your testimony that</p> <p>23 you -- that you gave and do you remember testifying</p> <p>24 about the Strickland memo at length in your prior</p>
<p style="text-align: right;">Page 186</p> <p>1 place with -- at the time of the launch of</p> <p>2 Cenestin?</p> <p>3 A. It had in place its rebate contracts,</p> <p>4 and it was aware that it had in place its rebate</p> <p>5 contracts and I would certainly expect that Wyeth</p> <p>6 would know that such contractual provisions, when</p> <p>7 it understood the type of entry that Cenestin was</p> <p>8 coming in with, would be effective at curtailing</p> <p>9 that entry.</p> <p>10 Q. All right. Certainly it had no prior</p> <p>11 experience with the sole conjugated estrogen</p> <p>12 language, though, right?</p> <p>13 A. Yes. I only hesitate because I'm not</p> <p>14 sure about in the early '90s, but I don't think</p> <p>15 it's relevant.</p> <p>16 Q. Now, since your -- since your last</p> <p>17 deposition, sir, did you get a copy of the</p> <p>18 transcript?</p> <p>19 A. Yes.</p> <p>20 Q. Did you review it?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have any changes?</p> <p>23 A. I don't recall. I mean, there were</p> <p>24 typos, the usual stuff. I didn't recall anything</p>	<p style="text-align: right;">Page 188</p> <p>1 deposition?</p> <p>2 A. I remember you asking me about it. I</p> <p>3 read the whole thing so I'm sure I read it.</p> <p>4 Q. Did you have any changes to any of the</p> <p>5 answers that you gave in response to the questions</p> <p>6 I asked you about the Strickland memo, what we</p> <p>7 marked as Exhibit 5 from your prior deposition?</p> <p>8 A. I don't recall that I -- I didn't make</p> <p>9 any. I don't recall when I read it if I -- there</p> <p>10 was nothing that I thought was worthy of making a</p> <p>11 formal change.</p> <p>12 Q. Oh. In paragraph 38 on page 25, you</p> <p>13 talk about the -- how competition from a branded</p> <p>14 competitor is different from a generic competition.</p> <p>15 We have covered some of this already.</p> <p>16 A. Yes.</p> <p>17 Q. And you reference how Professor James</p> <p>18 has come up with five illustrative events that</p> <p>19 provide information or don't provide information</p> <p>20 relative to the expected reaction of Wyeth to the</p> <p>21 entry of Cenestin absent the anticompetitive</p> <p>22 contractual provisions, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And let me show you these documents I</p>

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